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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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IN RE: *

TYCO INTERNATIONAL, LTD. * No. 02-md-1335-PB

Multidistrict Securities * October 27, 2008

Litigation * 2:00 p.m.

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EXCERPTED TELEPHONE CONFERENCE
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For ERISA Actions: Robert A. Iizard, Jr., Esq.
Shatz & Nobel, P.C.

For NJ Plaintiffs: Patrick Rocco, Esq.
Shalov Stone Bonner & Rocco, LLP

Tyco International: Elizabeth F. Edwards, Esq.
McGuireWoods, LLP

For TyCom Plaintiffs: Robert C. Finkel, Esq.
Wolf Popper, LLP

For Kozlowski: Jyotin R. Hamid, Esq.
Debevoise & Plimpton, LLP

For Swartz: Michael Grudberg, Esq.
Stillman, Friedman & Shechtman, P.C.

For Walsh: Laurence Greenwald, Esq.
Stroock & Stroock & Lavan, LLP

For Ballard: Rachel K. Marcoccia, Esq.
Morgenstern, Fisher & Blue, LLP

For Texas Teachers
Retirement System: Blair A. Nicholas, Esq.
Bernstein Litowitz Berger Grossmann

For Pricewaterhouse: Michael S. Flynn, Esq.
Davis, Polk & Wardwell

For Michigan
Retirement System: Frederic S. Fox, Esq.
Kaplan, Fox & Kilsheimer, LLP

For Public Employees'
Retirement
Association: Richard Gonnello, Esq.
Entwistle & Cappucci, LLP

For TyCom
Defendants: Lawrence B. Friedman, Esq.
Cleary Gottlieb Steen & Hamilton

For Neil Garvey: David B. Gordon, Esq.
Schoeman, Updike & Kaufman, LLP

Thomas Jasin: Thomas P. Jasin

Sandra L. Bailey, CSR, CM, CRR
Official Court Reporter
U.S. District Court
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1 IN CHAMBERS

2 THE COURT: Good afternoon. This is Judge
3 Barbadoro. I have a court reporter here. I want to
4 advise the parties that a member of the media called the
5 clerk's office and asked to participate in this call. I
6 told the clerk to tell the reporter that he or she could
7 not participate in the call, but I agreed to make a line
8 into the conference available in the courtroom should
9 the reporter want to listen. Certain portions of the
10 call might not be able to be conducted in public, but at
11 least initially I wanted to proceed with that option
12 that there will be a broadcast into the courtroom.
13 However, the reporter has not appeared at least when I
14 went down to the courtroom a few minutes ago, so I'm
15 going to send my assistant down to the courtroom and if
16 no one has showed up, we will just terminate that line
17 into the courtroom. So just give me a moment to have
18 her go and check on that.

19 All right, my assistant is going to be down in
20 the courtroom and she'll come back up and let me know
21 whether we have discontinued the line into the
22 courtroom, but there are certain things we can do that I
23 don't think anybody would object to them being done in
24 public.

25 First is I'd like to get a status report

1 regarding discovery, and why don't I hear from Tyco
2 first on that.

3 MS. EDWARDS: Good morning, your Honor, this
4 is Elizabeth Edwards on behalf of Tyco. Generally in
5 the cases where Tyco remains a party, discovery is
6 complete with the exception of the opt-out cases where
7 we haven't had any case specific discovery.

8 THE COURT: All right. And how about the New
9 Jersey plaintiffs, someone from their side, your
10 position on discovery?

11 MR. ROCCO: Yes, good afternoon, your Honor,
12 it's Pat Rocco with Shalov, Stone, Bonner & Rocco for
13 the New Jersey action plaintiffs. We should conclude
14 this week all expert discovery, your Honor. There are
15 two depositions scheduled for Thursday and Friday of two
16 damages experts and with that, with the exception of
17 those which are expected to be concluded this week,
18 we'll finish as well.

19 THE COURT: And from the ERISA plaintiffs,
20 what's your position regarding discovery.

21 MR. IZARD: Your Honor, this is Bob Izard,
22 your Honor, we have completed discovery.

23 THE COURT: All right, and the TyCom
24 plaintiffs, what's your perspective on discovery?

25 MR. FINKEL: Your Honor, it's Robert Finkel

1 from Wolf Popper. We've completed merits and expert
2 discovery. There's one outstanding witness that's
3 outside the United States that we have an understanding
4 would be available for a trial deposition prior to the
5 trial, but subject to that we've completed all
6 discovery.

7 THE COURT: All right, now, there are a number
8 of, I think I've touched on all of the major groups of
9 cases, but certainly not all of the parties in those
10 cases. I'd open the floor, if anyone else wants to
11 comment regarding the status of discovery in their
12 cases, just identify who you are and who you're speaking
13 for. Is there someone else that wanted to comment on
14 the status of discovery?

15 MR. NICHOLAS: Your Honor, it's Blair Nicholas
16 from Bernstein Litowitz on behalf of the Texas Teachers
17 opt-out group, and Ms. Edwards is correct, we haven't
18 had any specific discovery or formalized discovery in
19 the case yet which was effectively stayed pending
20 mediation discussions, but the opt-out plaintiffs have
21 had access to discovery produced in the Tyco Securities
22 MDL action, that includes deposition transcripts and
23 exhibits and other documents that were produced, and the
24 parties are actively reviewing those documents.

25 THE COURT: All right. Others that want to

1 speak on discovery? (Pause.) If I don't hear someone
2 speaking up, I'm going to conclude from this discussion,
3 then, that with certain specified exceptions and certain
4 case specific discovery in certain of the cases, all of
5 the discovery is completed.

6 Is there anybody that disagrees with that
7 view?

8 MS. EDWARDS: Your Honor, this is Elizabeth
9 Edwards. I don't disagree with that view, I'd just
10 alert the court that there are a couple specific
11 instances where the parties in a specific case have
12 agreed to postpone a deposition until later, for
13 example, in the ERISA case there's accounting experts
14 that we agreed to postpone until shortly before trial,
15 some things that I don't think delay the court's
16 progress of the case, but just wanted to alert your
17 Honor that there are a couple of those little exceptions
18 out there.

19 THE COURT: All right.

20 MR. FOX: Your Honor, this is Frederic Fox of
21 Kaplan Fox for Michigan Retirement System. Just so it's
22 a hundred percent clear, what Mr. Nicholas said with
23 respect to the opt-out applies to all of the opt-out
24 plaintiffs.

25 THE COURT: All right, thank you for

1 clarifying that, but I understood that to be the case.

2 MR. FOX: Okay.

3 MR. HAMID: Your Honor, this is Joe Hamid of
4 Debevoise for Mr. Kozlowski. I don't think we have any
5 issues but just to avoid waivers in light of your
6 Honor's comment, I think there is an issue in the
7 Ballard case where we're working to schedule a
8 deposition of the plaintiff's expert for that one
9 outstanding thing that hasn't happened, and then also in
10 the Tyco versus Kozlowski and Swartz Section 16(b)
11 action, we have an agreement with Tyco to put off the
12 depositions of the experts, there are two experts.

13 THE COURT: All right. Other comments with
14 respect to discovery? (Pause.) All right, hearing
15 none, let me advise you that the reporter who had
16 expressed an interest in participating did not -- did
17 not show up in court, so since there was no one else
18 there that was interested in listening we terminated the
19 telephone call connection into the courtroom, so only
20 the participants in the litigation and the court are
21 currently parties to the call.

22 I'd like to turn to settlement discussions,
23 and I'd like a status report from Ms. Edwards regarding
24 the status of settlement. I will, because these are --
25 matters are sensitive, at least until further order of

1 the court, treat this portion of the transcript as being
2 under seal.

3 (REMAINDER OF PROCEEDINGS SEALED.)

4 C E R T I F I C A T E

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6 I, Sandra L. Bailey, do hereby certify that
7 the foregoing transcript is a true and accurate
8 transcription of the within proceedings, to the best of
9 my knowledge, skill, ability and belief.

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12 Submitted: 10/29/08 /s/ Sandra L. Bailey
13 SANDRA L. BAILEY, CSR, CM, CRR

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